

**Testimony of Jim Harper
Director of Information Policy Studies
The Cato Institute
to
The Michigan House of Representatives
New Economy and Quality of Life Committee
regarding
The Federal REAL ID Act of 2005**

October 25, 2007

Executive Summary

Michigan is on the horns of a dilemma. The state is going through difficult economic times, yet the federal government threatens to make it even worse if the state does not go along with its national identification and border control mandates, the REAL ID Act and the Western Hemisphere Travel Initiative. It is wrong of the federal government to put you in this position, and you would be right to resist.

You can reject the REAL ID Act's mandates with confidence. REAL ID is ineffective security. Indeed, resisting REAL ID will help drive the federal government toward sounder policies that secure the country consistent with freedom and economic growth. To effectively counter the terrorism strategy, we must secure the country against both the threat of attack and the threat from overreactions like REAL ID and WHTI.

The security value of REAL ID ranges from \$2.24 billion to \$13.1 billion, but its cost to implement is \$17 billion. REAL ID costs more than it secures — even using generous assumptions. And the federal government has put almost no money toward implementation. Indeed, the U.S. Senate recently rejected spending a paltry \$300 million on REAL ID compliance, signaling that its support for the law is weak.

Beyond dollars, there is the massive inconvenience to Michiganders, who would search in vain for paperwork, and wait in long lines at Secretary of State branch offices, just to get a driver's license. The privacy and data security threats from REAL ID are probably insurmountable, but the Department of Homeland Security left states holding this bag.

The best way for Michigan to respond to REAL ID is to resist it. This national ID scheme is a net loser for the country's security and for Michigan's economy.

**Testimony of Jim Harper
Director of Information Policy Studies
The Cato Institute
to
The Michigan House of Representatives
New Economy and Quality of Life Committee
regarding
The Federal REAL ID Act of 2005**

October 25, 2007

Chairman Clemente and Members of the Committee —

Thank you for the opportunity to testify before you today. My name is Jim Harper, and I am director of information policy studies at the Cato Institute, a non-profit research foundation dedicated to preserving the traditional American principles of limited government, individual liberty, free markets, and peace. In that role, I study the unique problems in adapting law and policy to the information age. I also serve as a member of the Department of Homeland Security's Data Privacy and Integrity Advisory Committee, which advises the DHS Privacy Office and the Secretary of Homeland Security on privacy issues.

My most recent book is entitled *Identity Crisis: How Identification Is Overused and Misunderstood*. I am also editor of Privacilla.org, a Web-based think tank devoted exclusively to privacy, and I maintain an online resource about federal legislation and spending called WashingtonWatch.com. I speak only for myself today and not for any of the organizations with which I am affiliated or for any colleague.

The REAL ID Act is quite nearly a dead letter. States across the country have rejected this unfunded federal surveillance mandate because of its costs, because it is nearly impossible to implement, and because of the damage it would do to the privacy of law-abiding citizens. More and more, people are recognizing that the REAL ID Act would not add to the country's protections against terrorism, and it would not solve the problem of illegal immigration.

The Western Hemisphere Travel Initiative is a similarly flawed policy. At enormous cost to lawful trade and travel, it would provide a tiny increment of security. Like REAL ID, it does not pass a cost-benefit test. Implementing WHTI, through a special “passport card” or otherwise, would do more to harm Michigan and the country by sapping our economic strength than it would do to prevent any damage that a terrorist act could do.

Michigan is on the horns of a dilemma. The state is going through difficult economic times, as you know so well. Yet the federal government threatens to make it even worse if you do not go along with their identification and border control mandates. I think it is wrong of the federal government to put you in this position, and you would be in the right to resist.

REAL ID is Mistaken Security Strategy

I start with security because it is of the utmost importance, and also because study of it reveals that you can resist the REAL ID Act’s mandates with confidence. REAL ID is ineffective security. Indeed, resisting REAL ID and WHTI will help drive the federal government toward sounder policies that secure the country consistent with freedom and economic growth.

Terrorism is a strategy used by the weak to goad a stronger opponent into self-injurious missteps. Al Qaeda’s attacks on September 11, 2001 worked very well against the U.S., as the Bush Administration and Congress initiated and acceded to numerous programs that violate civil liberties and waste American blood and treasure. We have spent much more money and killed as many people in reaction to the September 11 attacks as the direct damage the terrorists did on that day.

To counter terrorism, we must acknowledge the dual threat it presents. Unanticipated attacks on an unprepared country may do us harm, but so will overreaction — such as the needless shedding of civil liberties and the wasting of our economic health through a national ID program, restricted trade and travel, and anti-immigrant policies. Federal authorities have yet to discover what policymakers like you are now facing thanks to the REAL ID Act: we must secure the country against both the threat of attack and the threat of overreaction.

Rational, risk-based counterterrorism has been a priority of the federal Department of Homeland Security in words, if not in deeds. Economic analysis of the REAL ID Act’s proposed regulations show that this national ID system is an irrational overreaction that will do more harm than good.

In testimony to the U.S. Senate’s Homeland Security and Governmental Affairs Committee¹ and the Senate Judiciary Committee,² I showed using Department of

¹ See Testimony of Jim Harper, Director of Information Policy Studies, The Cato Institute, to the Senate Committee on Homeland Security and Governmental Affairs, Subcommittee on Oversight of Government Management, the Federal Workforce, and the District of Columbia, *Understanding the Realities of REAL*

Homeland Security projections that REAL ID costs more to implement than it would add to our country's protections. I won't burden you with every detail, but evaluating the REAL ID Act on its ability to delay attacks or change their character — and assuming quite generously a future attack on the scale of a 9/11 — I found that the security value of REAL ID ranges from \$2.24 billion to \$13.1 billion. This is after spending of \$17 billion to implement it (also a DHS estimate). REAL ID offers more in costs than in security benefits — even using very generous assumptions.

And the DHS' analysis considered none of the counter-attacks that a national ID system like REAL ID would suffer. If the law is implemented, terrorists, criminal organizations, and illegal aliens will forge documents and corrupt DMV officials to acquire genuine, though inaccurate, ID cards. Terrorists already recruit people without histories of terror activity so that they can enter the country legally, acquire documents legally, and access infrastructure legally. We would be foolhardy to ever rely on a national ID for security against committed threats like terrorists, or to control people with nothing to lose like so many of the illegal aliens who come here from poverty, simply hoping to work.

The Western Hemisphere Travel Initiative is similarly flawed. While I am not aware of and detailed economic analyses, WHTI implementation at land borders will be an ongoing attack on lawful trade and travel — deeply threatening to Michigan's economy — that does not materially advance our security.

We all want to see terrorists apprehended. But we must insist on intelligent, thought-through measures to achieve that goal. REAL ID and WHTI are not intelligent measures. They would be about as effective at catching terrorists as a chainsaw would be at killing flies.

Swinging a chainsaw at flies won't just miss, of course. It will also have costs and do collateral damage, just like implementation of REAL ID would do.

The Costs of REAL ID

I referred briefly above to the costs of REAL ID. They deserve more discussion.

Dollars

In the proposed regulation, the DHS estimated \$17 billion in costs to implement REAL ID. This is the “net present value” of the spending that would happen in the future — the

ID: A Review of Efforts to Secure Drivers' Licenses and Identification Cards (March 26, 2007)
<<http://www.cato.org/testimony/ct-jh03262007.html>>.

² See Testimony of Jim Harper, Director of Information Policy Studies, The Cato Institute, to the Senate Committee on the Judiciary, *Will REAL ID Actually Make Us Safer? An Examination of Privacy and Civil Liberties Concerns* (May 8, 2007) <<http://www.cato.org/testimony/ct-jh20070508.html>>.

amount you would have to put in the bank today to fund REAL ID's costs over the next ten years. That's over \$50 for every man, woman, and child in Michigan and the United States.

About \$11 billion of these costs would come directly from state governments. The federal government has appropriated almost no money for REAL ID implementation. Indeed, the Senate recently declined to appropriate a paltry \$300 million for state REAL ID grants, leaving it squarely in the "unfunded mandate" category.³ If you spend money on REAL ID, you will have less for law enforcement and courts, fire protection, and security measures that actually work.

I understand that Department of Homeland Security officials have been conducting off-the-record meetings with state DMV officials, telling them that the cost estimates for REAL ID will come down when the final regulations are issued. They may bend the law to the breaking point to do so — and add yet more holes to REAL ID's security Swiss cheese — but the benefits of this national ID system in any real-world implementation will be far less than they are under the generous assumptions I cited above. And none of us have ever seen a federal program come in under budget.

Wasted Time

The other \$6 billion will be borne by the public, in the costs of navigating the new bureaucracy and red tape needed just to get a driver's license. This means digging up birth certificates or getting copies from public records' offices, a significant percentage of which may not exist any more, such as in New Orleans. It means native-born American citizens, who may never have traveled overseas, searching for proof of "legal presence" in the country. It means Michiganders standing in very long lines at Secretary of State branch offices. They'll be calling you about that.

Alabama is a state that tried to get ahead of the REAL ID Act's mandates in 2006. Attempting simply to match up the names in Social Security Act databases with motor vehicle bureau records, Alabama sent letters to individuals whose records were mismatched, asking them to correct the "erroneous" information on their driver's licenses. Thousands of panicked Alabama residents jammed Department of Public Safety offices thinking they would lose their licenses.

These types of problems will multiply when states try to comply with all the mandates of the REAL ID Act. Especially when they are asked to prove their legal right to be in the

³ This and other votes show that the national ID law is not beloved in that body. The Senate had no hearings on the REAL ID Act before it passed. Because the bill was attached to a must-pass military spending bill in the House, it did not even get an up-or-down vote in the Senate. And the current chairman of the Senate Homeland Security and Governmental Affairs Committee called it "unworkable" when it passed.

United States, expect more than a few Michigan-born citizens to jump over the counter at the Secretary of State's branch offices.

Privacy

The privacy and data security consequences arising from REAL ID are immense, increasingly well understood, and probably insurmountable.

The increased data collection and data retention required of states under REAL ID is very concerning. Requiring states to maintain databases of foundational identity documents will create an incredibly attractive target to criminal organizations, hackers, and other wrongdoers. The breach of a state's entire database, containing copies of birth certificates and various other documents and information, could topple the identity system we use in the United States today — in case you think we don't have enough of an identity fraud problem now. The best data security is not creating large databases of sensitive and valuable information in the first place.

The requirement that states transfer information from their databases to each other is equally threatening. This exposes the security weaknesses of each state to the security weaknesses of all the others. There are ways to limit the consequences of having a logical national database of driver information, but there is no way to ameliorate all the consequences of the REAL ID Act requirement that information about every American driver be made available to every other state.

The security of back-end systems is far from the only problem. Creation of a nationally uniform identity system would bring a major change in the way our society operates. It is not just another in a series of small steps. It would promote tracking and data collection about all citizens.

Economists know well that standards create efficiencies and economies of scale. When all the railroad tracks in the United States were converted to the same gauge, for example, rail became a more efficient method of transportation. The same train car could travel on tracks anywhere in the country, so more goods and people traveled by rail. Uniform ID cards would have the same influence on the uses of ID cards.

There are machine-readable components like magnetic strips and bar codes on many licenses today. Their types, locations, and designs, and the information they carry differs from state to state. For this reason, they are not used very often. But if all identification cards and licenses were the same, there would be economies of scale in producing card readers, software, and databases to capture and use this information. Americans would inevitably be asked more and more often to produce a REAL ID card, and share the data from it, when they engaged in various governmental and commercial transactions.

In turn, others will capitalize on the information collected in state databases and harvested using REAL ID cards. Speaking to a recent meeting of the Department of Homeland Security's Data Privacy and Integrity Advisory Committee, Anne Collins, the Registrar of Motor Vehicles for the Commonwealth of Massachusetts said, "If you build it they will come." Massed personal information will be an irresistible attraction to the Department of Homeland Security and many other governmental entities, who will dip into data about us for an endless variety of purposes.

Sure enough, the DHS' proposed regulations cite some other uses that governments are likely to make of REAL ID, including controlling gun ownership, "unlawful employment," drinking, and smoking. Uniform ID systems are a powerful tool. REAL ID will be used for many purposes beyond what are contemplated today.

But the DHS' proposed regulations "punted" on even small steps to control these privacy concerns. They say for example that REAL ID "does not create a national database, because it leaves the decision of how to conduct the exchanges in the hands of the States." My car didn't hit you — the bumper did!

As to security and privacy of the information in state databases, the regulations merely propose paperwork. Under the proposed rules, states must prepare a "comprehensive security plan" covering information collected, disseminated, or stored in connection with the issuance of REAL ID licenses from unauthorized access, misuse, fraud, and identity theft. A plan is not protection. The DHS does not even propose to condition federal acceptance of state cards on meeting the low standards of the federal Privacy Act or FISMA.

Where to Go From Here

You can be confident that rejecting REAL ID will not put the country at risk. Indeed, you can help steer the country toward well-thought-out counterterrorism policies and practices by resisting REAL ID.

These programs do not secure the country. Rather, they succumb to the terrorism strategy by wasting American economic power. The costs of REAL ID are very large, and they include huge amounts of spending, the waste of Michiganders time on bureaucratic red tape, and the undoing of law-abiding citizens' privacy.

I understand the essential need for Michigan to maintain close economic ties to Canada. The best way to do that is to fight the federal restrictions on trade and travel created by the REAL ID Act and the Western Hemisphere Travel Initiative.

In my book *Identity Crisis*, I explore the future of identity and identification systems. Identification is an essential economic and social tool, but it is also a powerful weapon if misused. Having a national ID card as envisioned by the REAL ID Act would be a step in the wrong direction when we should be moving toward a diverse, competitive identification and credentialing market that uses the latest technologies to deliver security *without* surveillance. Were you to join other states in opposition to REAL ID, that would help us get there.

Thank you for letting me share my views with the committee.



REAL ID Act hurts Michigan

by Jim Harper

Jim Harper is director of Information Policy Studies and the author of *Identity Crisis: How Identification is Overused and Misunderstood*.

If you think going to the Secretary of State's office is a pain now, wait until the REAL ID Act takes effect in May of next year. If Michigan complies, it will be required to overhaul its drivers' licenses to meet strict federal guidelines, creating a de facto national ID card.

Data on every American driver would be entered into a national database. Understandably, many people have privacy concerns about REAL ID. But this is just one reason for Michigan to join the three other states that have already refused to comply with the act.

For starters, there are significant cost concerns. Originally estimated by the National Conference of State Legislatures to cost \$11 billion nationwide, the Department of Homeland Security now says implementing the law will cost \$17 billion. This burden would fall disproportionately on Michigan because of its large population.

The reason the feds are imposing these costs is because they think it will increase national security.

Many people are fixated on the Sept. 11 attack, and it was a significant event, to be sure. But we must build our security systems to address future attacks coming from any number of threats. REAL ID would be, at best, a modest inconvenience to foreigners plotting an attack, and no inconvenience at all to domestic attackers -- well, no more inconvenience than every American would have to suffer in line at the secretary of state's office.

Identification is not a defense against the threats that matter most, and we should not rely on the secretary of state employees for our security.

REAL ID's costs in privacy and civil liberties are not to be ignored. A nationally standardized card would be used by governments and corporations alike to harvest data about all of us, increasing the power of organizations over individuals.

Ironically, REAL ID may also increase identity theft. Hackers have repeatedly broken into the Department of Veterans Affairs' veteran health care records. In 2005, Bank of America lost computer tapes containing records on 1.2 million customers. There is no reason to think that REAL ID's nationally available databases would be any less vulnerable -- and they would contain information on every American with a driver's license.



Michigan Secretary of State Terri Lynn Land has been saying for more than two years that REAL ID is too expensive. She has been pushing a plan to let states such as Michigan use REAL ID-compliant driver's licenses as passports. It's a nice idea -- killing two birds with one stone -- but the better solution is to have the federal government fix its wrongheaded border policy, too.

The federal "Western Hemisphere Travel Initiative" is responsible for the new passport requirement at the Canadian border. Under the initiative, Americans will sit in mile-after-mile of border traffic, whether or not there is a passport card. Meanwhile, anyone wanting to evade passport checks can easily do so. They can simply cross anywhere along the hundreds of uncontrolled border miles.

Along with the initiative, Michigan should reject REAL ID by refusing to comply with its requirements. Maine, Idaho and Arkansas have already spoken up, and several other states are lining up to follow their lead. This would send the issue back to Washington and force Congress to add more sensible protections to our security programs -- protections that bring more benefit than cost, and that preserve our civil liberties. A free people deserve no less.

And it might help to keep our trips to the Secretary of State's office as painless as possible.

This article appeared in the Detroit News on April 12, 2007.